

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES A. CARSON, JR.,	:	
Plaintiff,	:	No. 1:17-cv-01263-YK
	:	
v.	:	
	:	CIVIL ACTION
DETECTIVE JESSICA M. AURAND,	:	
in her Individual Capacity, <i>et al.</i>	:	
Defendant.	:	JURY TRIAL DEMANDED
	:	

**DEFENDANT DETECTIVE JESSICA M. AURAND'S
UNOPPOSED MOTION FOR LEAVE OF COURT TO FILE
DOCUMENTS UNDER SEAL PURSUANT TO FED.R.CIV.P. 5.2(d)**

Defendant, Detective Jessica M. Aurand (hereinafter "Detective Aurand"), by and through her attorneys, Siana, Bellwoar & McAndrew, LLP, files this Unopposed Motion for Leave of Court to File Documents Under Seal Pursuant to Fed.R.Civ.P. 5.2(d), and in support thereof avers as follows:

1. Plaintiff, James A. Carson, Jr., ("Plaintiff"), initiated suit on July 18, 2017, against Detective Aurand and her employer, the Mifflin County Regional Police Department ("MCRPD") alleging various civil rights violations. (ECF 1, Complaint).
2. On January 2, 2018, the Plaintiff and Detective Aurand, through their respective counsel executed a Confidentiality Agreement, whereby the Parties sought to limit the production of certain sensitive documents and material marked "CONFIDENTIAL" by any party producing the same through the course of

discovery. (A true and correct copy of the Confidentiality Agreement is attached hereto as Exhibit A).

3. The Confidentiality Agreement protects against disclosure of “Confidential Material” as defined by Paragraph 1. (Ex. A).

4. According to Paragraph 1, “Confidential Material” is defined as

Social Security or taxpayer-identification numbers; dates of birth; names of minor children; financial account numbers; home addresses; personal telephone numbers; personal e-mail addresses; sensitive information involving personal financial, medical, matrimonial, or family matters; personnel files; video of minor’s interview; mental health records and/or other private health records protected by HIPAA in the possession of the parties and/or received from third-parties in response to any subpoena; any and all records related to the subject minor.

(Ex. A).

5. Through the course of discovery and/or in response to subpoena, public and private agencies/entities produced certain materials which have been designated “CONFIDENTIAL” or which constitute “Confidential Information” under the terms of the Confidentiality Agreement.

6. Paragraph 3 of the Confidentiality Agreement, states in relevant part that Confidential Information shall be treated as confidential and no Confidential Information may be revealed, disclosed or described, in whole or in part, unless permitted by order of the Court upon application or motion. (Ex. A).

7. On or before June 18, 2018, Detective Aurand intends to seek summary judgment as to all claims asserted against her pursuant to Rule 56 of the Federal Rules Civil Procedure consistent with the Court's Case Management Order. (ECF 23, Order).

8. In order to adequately seek summary judgment, Detective Aurand must attach as exhibits certain Confidential Information produced by public and private agencies/entities during the course of discovery and/or in response to subpoena.

9. These exhibits contain privileged and sensitive information, including sensitive medical information of minor, S.W. or Plaintiff, James Carson, Jr., identifying information of Plaintiff, and of third parties not participating in this lawsuit.

10. Redaction of the personal data identifiers from the documents as required by Local Rule 5.2(d) alone will not adequately protect the confidentiality of the minor or Plaintiff as the documents pertain to the culmination of a suspected child abuse investigation, which forms the basis of Plaintiff's claim against Detective Aurand.

11. Federal Rule of Civil Procedure 56(d) permits the Court to enter an order that a filing, or parts of a filing, be made under seal. Fed.R.Civ.P. 56(d).

12. Pursuant to Local Rule of Civil Procedure 5.8, a party seeking to file

any document under seal must obtain prior leave of Court by filing a motion for leave to file under seal. *See L.R. 5.8.*

13. Accordingly, Detective Aurand respectfully seeks an Order permitting her to file documents described as Confidential Information under seal.

14. Although it is well-settled among courts within the Third Circuit that there exists a common law right to public access to judicial proceedings and records, courts also have recognized the principle that the “right is not absolute.”

See, e.g., Littlejohn v. BIC Corp., 851 F.2d 673, 678 (3d Cir. 1998) (*quoting Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978)); *Leucida, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 165 (3d Cir. 1993); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984).

15. If, at any stage of the litigation a party seeks to file a document or motion under seal, it must apply to the court for an order of confidentiality. *See generally Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785-87 (3d Cir. 1994).

16. Filing Confidential Information under seal will not prejudice any party and will protect the confidentiality of third parties, the minor’s interests, Plaintiff’s confidentiality, and the interests of justice in this case.

17. The undersigned counsel has conferred with Plaintiff’s counsel regarding the necessity to file documents described as Confidential Information under seal and Plaintiff’s counsel does not oppose the relief request in the instant

Motion.

WHEREFORE, Detective Aurand respectfully requests that this Honorable Court grant her Unopposed Motion for Leave of Court to File Documents Under Seal, and enter an Order, in the form of the attached Proposed Order.

Respectfully Submitted,

SIANA, BELLWOAR & McANDREW, LLP

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this day a true and correct copy of the Unopposed Motion for Leave of Court to File Documents Under Seal Pursuant to Fed.R.Civ.P. 5.2(d), and supporting Brief, on behalf of Defendant, Detective Jessica M. Aurand, were served via electronic filing as indicated:

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Dated: June 13, 2018